

Senator

Michael McDowell



Former Tánaiste, Minister for Justice and Attorney General

On March 8th you will be asked whether you want to make changes to the Constitution which will have serious consequences for Irish society.

The Government has rushed two Bills to amend the Constitution through the Oireachtas using guillotine motions in the Dáil and Seanad to prevent normal proper scrutiny of the Bills and their consequences.

One Bill proposes to change the Constitutional provisions relating to families by extending the concept to “other durable relationships” while leaving the meaning of that phrase to the courts to decide in future. **This is the 39th Amendment (Family) Bill.**

The other Bill proposes to delete the State’s constitutional obligation to endeavour to support mothers who wish to provide care to their children in their homes rather than be forced by economic necessity to work outside the home. **This is the 40th Amendment (Care) Bill.**

It also proposes to insert a vague new Article about family care in the Fundamental Rights chapter of the Constitution but without conferring any new rights at all either on carers or people in need of care.

I am advising citizens to reject both of these amendments and am setting out briefly my reasons with links to more detailed analysis

A handwritten signature in blue ink that reads "Michael McDowell". The signature is fluid and cursive.

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THE 39TH AMENDMENT BILL

This proposal is to reword Article 41.1.1 to read as follows with the new wording in **BOLD CAPITALS**:

“The State recognises the Family **WHETHER FOUNDED ON MARRIAGE OR ON OTHER DURABLE RELATIONS** as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.”



The Government proposes that the meaning of “other durable relationships” will fall to be decided by the Courts in future cases. The Oireachtas – Dáil and Seanad – will not decide by law what relationships are or are not “durable relationships” sufficient to constitute the family in future.

Under existing statute law enacted in 2010, cohabiting couples of adults in a “committed and intimate” relationship can be given some rights to support and to be provided for out of the property of either of them in certain limited circumstances but they are also given the right to contract out of these rights.

There is absolutely no bar at present to the Oireachtas passing laws to ensure fairness for single parent families, for cohabitants or for parties to other relationships as was shown in the recent Supreme Court decision in the O’Meara case.

Because the Government’s amendment proposes to end all “**differential treatment**” in the Constitution between marital and non-marital families, it will undoubtedly create new and unforeseen equality and non-discrimination cases **in family law (including division powers on incomes, homes, businesses and farms) and in pension law, succession law, taxation law and immigration law.**

The Bill also proposes deleting the following words in BOLD CAPITALS from Article 41.3.1 which at present reads:

“The state pledges to guard with special care the institution of marriage, **ON WHICH THE FAMILY IS FOUNDED**, and to protect it from attack”. This deletion renders the State’s pledge wholly uncertain or meaningless.

IMMIGRATION LAW CONSEQUENCES



Minister Neale Richmond, Tonight Programme Virgin Media

*“And this is what I want to get to the key point of , changing what the definition of family is..... this has **serious consequences** particularly when we think of immigration law and proving that someone is a family member, family law, family reunification this will allow that to happen as well, so we’re keeping up to pace with other communities.”*

Claire Brock, presenter: “So you’re talking about durable relationships?”

*Minister Neale Richmond “**Absolutely, yeah**”*



DURABLE RELATIONSHIPS WILL ONLY BE DECIDED BY THE COURTS

If the Supreme Court in future decides that “other durable relationships” applies to any particular types of domestic existence, the only way to amend the outcome of such cases will be by referendum.



THE 40TH AMENDMENT BILL



This proposed amendment would entirely delete the State's Constitutional obligation to endeavour to support mothers whose preference is to provide care for their children in their homes rather than be forced by economic necessity to work outside the home.

The amendment would remove an important section of the Constitution which has been cited by the Supreme Court in several important cases.

This very section was relied on by the Supreme Court in the landmark 1980 **Murphy decision** to make unconstitutional income tax laws which treated married people less favourably than unmarried people.

The section was also cited on by Chief Justice Finlay in the Supreme Court, in *L v L*, a 1992 case, when he said that **“maintenance or alimony could and must be set by a court so as to avoid forcing by economic necessity the wife and mother to labour out of the home to the neglect of her duties in it.”**

NO ENFORCEABLE RIGHTS FOR CARERS

Instead of the present wording of Article 41.2 which has been important for women and mothers in court decisions, the proposed amendment would insert a vague new Article 42B in the following terms:

“The State recognises that the provision of care, by members of a family to one another by reason of the bonds that exist among them, gives to society a support without which the common good cannot be achieved, and shall strive to support such provision.”

This amendment confers no legal rights on carers in the home or on people including disabled people who need care in or out of the home. The wording only refers to family members and ignores all other care situations.



*I cannot express this strongly enough. This wording is such a lost opportunity and it adds insult to injury. It is a slap in the face for disabled citizens and the huge community and network of carers. **I believe these proposed changes are going to fail and what a waste of an opportunity, apart from the waste of millions of taxpayers' euro.** This is such a poorly-worded proposal. I have been in this House for almost two years and I cannot get my head around this. I do not understand why the Government would persist*

Senator Tom Clonan (family carer) , 40th Amendment debate, Seanad Éireann January 2024



Although this new proposed article is to be inserted in the Fundamental Rights chapter of the Constitution it gives absolutely no new legal rights to anyone.



THE CONSTITUTION DOES NOT SAY THAT “WOMAN’S PLACE IS IN THE HOME”

Some commentators including the heavily government funded **National Womens Council of Ireland** and **The Green Party** keep claiming the Constitution says that “woman’s place is in the home”. **THAT IS A FALSE CLAIM WHICH AMOUNTS TO DELIBERATE DISINFORMATION.**



“Article 41.2 does not assign women to a domestic role. Article 41.2 recognises the significant role played by wives and mothers in the home. This recognition does not exclude women and mothers from other roles and activities... the work is recognised because it has immense benefit for society”

– **Ms Justice Susan Denham, Former Chief Justice (Sinnott v. Minister for Education, 2001)**



‘the Constitution... is to be interpreted as a contemporary document. The duties and obligations of spouses are mutual, and, without elaborating further since nothing turns on the point in this case, it seems to me that [the Constitution] implicitly recognises the value of a man’s contribution in the home as a parent’

– **Chief Justice Murray, DT v CT, Supreme Court 2002**



THE UNJUST MARRIAGE BAR IN STATE EMPLOYMENT DID NOT ARISE FROM ARTICLE 41.2

In fact, the unjust bar on married women holding State employment pre-dated the Constitution and existed in many other European states including the United Kingdom. **The present Constitution’s wording did not and does not support any discrimination against women in the workplace or anywhere else.**

On the contrary, Article 45 provides that the State should direct its policy towards securing that **“the citizens, all of whom men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs.”**

REASONS TO SAY NO

- **NO** SPECIAL RECOGNITION AT ALL FOR WOMEN OR MOTHERS IN THE CONSTITUTION
- **NO** NEW RIGHTS FOR DISABLED PEOPLE OR THEIR CARERS
- **NO** DEFINITION OF DURABLE RELATIONSHIPS
- **NO** CLARITY ON HOW EXISTING IMMIGRATION LAW, TAX LAW, PENSION LAW, SUCCESSION LAW WILL BE AFFECTED
- **NO** CONSTITUTIONAL RECOGNITION OR PROTECTION FOR MOTHERS WHO WISH TO BE HOME PARENTS
- **NO** REAL LEGAL INCENTIVE TO MARRY
- **NO** TO RUSHED AND GUILLOTINED LEGISLATION
- **NO** NEED TO WASTE €20 MILLION ON UNNECESSARY REFERENDUMS

**VOTE
NO/NO
ON MARCH 8TH**

VOTE NO

to both Amendments
in the March 8th
referendums



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For further information and articles see www.michaelmcdowell.ie